



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

October 18, 1994
AO-94-36

Melissa D. Gerrity, Treasurer
Planned Parenthood Advocacy Fund
99 Bishop Allen Drive
Cambridge, MA 02139-3496

Re: Expenditure by Membership Organization for Voters' Guide;
Lobbying Expenditures by Political Action Committees

Dear Ms. Gerrity:

This letter is in response to two questions raised in your August 24, 1994 letter to Auditor June Thompson, which I will treat as a request for an advisory opinion.

You have stated that in 1992¹ the Planned Parenthood Advocacy Fund ("the PAC") incurred a liability in the amount of \$2,760.80 for the mailing of voters' guides to "your membership." The PAC's parent organization, the Planned Parenthood League of Massachusetts ("the League") paid the liability for the PAC in 1993. You have asked if the League could properly make this expenditure where the voters' guide was distributed to "your members" only.²

You have also stated that the PAC made a series of expenditures in 1993 which were related to lobbying activity. In particular, the PAC paid approximately \$3,500 for the printing of materials used to lobby state legislators. You have asked if it is necessary to report lobbying expenditures on the PAC's campaign finance reports.

¹ This office does not ordinarily address, in advisory opinions, actions which have already occurred. This opinion is issued however, since the described expenditures are likely to be repeated in the future, and since the answers to your concerns may be of interest to other political committees or candidates.

² We assume that your reference to "your members" means members of the League.

For the reasons which follow, the payment can be made by the League, but would be considered a "contribution" subject to the limits and reporting requirements imposed by the campaign finance law. In response to your second question, the PAC can make, but must report, lobbying expenditures provided they are consistent with the principles for which the committee was organized.

1. Expenditure by League for Voters' Guide

The campaign finance law defines a "contribution" in part as a payment of money or anything of value to a committee made for the purpose of influencing the nomination or election of a candidate. See M.G.L. c. 55, s. 1. The making of a payment by the League to satisfy the PAC's liability incurred in mailing the voters' guide to League members would be considered an in-kind "contribution" since you have not provided sufficient evidence that the payment was not for the purpose of influencing the nomination or election of a candidate or candidates.³

Although the campaign finance law does not prohibit the parent organization of a PAC from making contributions to the PAC, any contribution would be subject to the limitations imposed by section 6 of chapter 55. In particular, section 6 limits the amount which may be contributed by "political committees" to PACs to \$1,000 in a calendar year.

A political committee is defined in part as any association or other group "which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates" See M.G.L. c. 55, s. 1. Although under this definition it would seem that any group or association making a contribution to a PAC might be subject to the limitations imposed by section 6, this office has interpreted the definition as not applying to groups or associations which make only "incidental" political expenditures.

In IB-88-01, the office defined "incidental" expenditures as annual expenditures exceeding \$15,000 or ten percent of the previous year's gross revenues of an association, whichever is less. The office stated that associations which do not raise funds for a political purpose, but which make expenditures of a more than incidental nature, must submit reports to this office

³ The payment by the League, if made on or after January 1, 1995, may not be considered a contribution. See s. 15 of c. 43 of the Acts of 1994, which states that the definition of "contribution" contained in section 1 of chapter 55 will be changed by adding the following paragraph to section 1: "Notwithstanding any other provisions of this chapter, communications from a membership organization, not including a corporation subject to section eight [a business or professional corporation], to its members and their families on any subject shall not be deemed to be a contribution or expenditure."

reflecting the expenditures. We are unable to determine, from your letter, whether the League's payment of \$2,760.80, together with other expenditures to the PAC, are more than "incidental." Expenditures must be reported to OCPF on Form CPF 111 if the total annual expenditures exceed the incidental threshold outlined above. Copies of IB-88-01 and Form CPF 111 are enclosed.

2. Lobbying Expenditures by Political Action Committees

Chapter 55 allows political committees to make expenditures directed to the enhancement of the principle or purpose for which the committee was created, provided that such expenditures are not for an individual's personal use. See M.G.L. c. 55, sections 6 and 7. Chapter 55 does not contain a prohibition relating to lobbying expenses.

This office has, until recently, advised that political committees may not pay for any lobbying expenses which the office concluded were not within the scope of M.G.L. c. 55. The regulations issued by this office prohibit political committees from "expending money for the purpose of promoting, opposing, or influencing legislation," See 970 CMR 2.06(6)(b)3.

In a recent advisory opinion, AO-93-25, we determined that the prohibition, at least when strictly applied to ballot question committees, was unduly burdensome and was not mandated by chapter 55. We stated that "the regulation was designed to prevent political committees subject to 970 CMR 2.06, in general, from becoming lobbying groups." Similarly, a PAC can make lobbying expenditures if the expenditures are consistent with the PAC's purpose and not for an individual's personal use.⁴

If the lobbying expenditures described in your letter meet this standard, i.e., if the expenditures made for printed materials distributed during Lobby Day at the State House were made to further the PAC's goals, they could appropriately be made by the PAC. Such expenditures must be listed, however, on Schedule B of the campaign finance reports filed by the PAC. See M.G.L. c. 55, s. 18.

This opinion has been rendered solely on the basis of representations made in your letter, the assumptions stated in this letter, and solely in the context of M.G.L. c. 55. Your question regarding the propriety of an expenditure by a tax exempt organization may involve other statutes not within the jurisdiction of this office. You may wish to contact the Department of Revenue and the Internal Revenue Service for further guidance. In addition, the PAC should contact the Secretary of State's Lobbying Division prior to making any

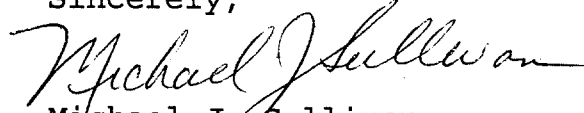
⁴ Whether candidate committees may make lobbying expenditures is not an issue raised by your question, and this opinion should not be read to apply in any manner to candidate committees.

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lobbying expenditures or engaging in any lobbying activities as the PAC may have reporting requirements under M.G.L. c. 3.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned above the printed name and title.

Michael J. Sullivan
Director

MJS/cp
Enclosures